

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM INDIVIDUAL INCOME TAX ADJUSTED GROSS INCOME CAPITAL GAINS FROM STOCK SALES OF QUALIFIED CORPORATIONS IN MONTANA; ESTABLISHING THE QUALIFICATIONS OF THE CORPORATION; ALLOWING A DEDUCTION OF CAPITAL GAINS FROM INCOME FOR THE CORPORATE LICENSE TAX; AND AMENDING SECTIONS 15-30-110, 15-30-111, AND 15-31-114, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-30-110, MCA, is amended to read:

**"15-30-110. Exemption for gain on sale or exchange of certain capital assets -- gains from stock of Montana qualified corporations.** (1) Notwithstanding the provisions of 15-30-111, adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(2) (a) Capital gains on common or preferred stock that was purchased after December 31, 2004, in a qualified corporation that is held for at least 3 years is not included in adjusted gross income.

(b) For the purposes of this subsection (2), "qualified corporation" means a corporation that:

(i) is a C. corporation and has been reported as a C. corporation for federal tax purposes for the 2 years immediately preceding the year in which the exemption is claimed;

(ii) was not publicly traded on a stock exchange or listed for over-the-counter trading or was not affiliated, as defined in 13 CFR 121.103, with a publicly traded company at the time the stock was purchased or at any time within 2 calendar years prior to the ending date of the tax year in which the exemption is claimed;

(iii) is headquartered within the state and has its principal business operations located within the state;

(iv) has at least 35% of its directors and officers and 60% of its employees residing in the state in the year in which the exemption is claimed and for at least the 2 years immediately preceding the year in which the exemption is claimed;

(v) employed fewer than 100 full-time equivalent employees at the time the stock was purchased and

1 has fewer than 500 full-time equivalent employees when the exemption is claimed;

2 (vi) is an active operating entity that produces goods or services. An active operating entity under this  
3 subsection (2)(b)(vi) does not include a passive investment entity that primarily engages in buying, holding, and  
4 trading assets for speculation on price changes such as:

5 (A) real estate holding companies, real estate investment trusts, and companies whose assets  
6 predominantly consist of real property or whose income is predominantly derived from the sale, rental, or  
7 management of real property or interests in real property such as leaseholds or mineral rights;

8 (B) companies whose assets predominantly consist of or whose income predominantly arises from  
9 financial instruments such as futures contracts, insurance contracts, mortgages, or debt obligations;

10 (C) shell business entities, as defined in 33-12-102, whose assets predominantly consist of share and  
11 equity interests in other companies.

12 (c) A distribution of income that would have qualified as capital gains to the pass-through entity under  
13 subsection (2)(a) is not included in the adjusted gross income of the partner, shareholder, member, or other  
14 owner of the pass-through entity. The income must be attributed to the partner, shareholder, member, or other  
15 owner of a pass-through entity in the same proportion used to report the pass-through entity's income or loss  
16 for Montana income tax purposes."

17  
18 **Section 2.** Section 15-30-111, MCA, is amended to read:

19 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal adjusted  
20 gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the  
21 following:

22 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other  
23 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana  
24 under federal law;

25 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
26 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

27 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a  
28 reduction of Montana income tax liability;

29 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue  
30 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

1 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

2 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the  
3 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

4 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of  
5 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution  
6 of the same estate or trust for the same tax period; and

7 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing  
8 after December 31, 2002, the amount of any dividend, to the extent that the dividend is not included in federal  
9 adjusted gross income.

10 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not  
11 include the following, which are exempt from taxation under this chapter:

12 (a) (i) all interest income from obligations of the United States government, the state of Montana, a  
13 county, municipality, or district, or other political subdivision of the state and any other interest income that is  
14 exempt from taxation by Montana under federal law;

15 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
16 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

17 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and  
18 including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

19 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income  
20 received as defined in 15-30-101;

21 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

22 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
23 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in  
24 excess of \$30,000 as shown on the taxpayer's return;

25 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity  
26 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in  
27 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000  
28 as shown on their joint return;

29 (d) all Montana income tax refunds or tax refund credits;

30 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

1 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by  
2 section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on  
3 January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide  
4 food, beverage, or lodging;

5 (g) all benefits received under the workers' compensation laws;

6 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the  
7 employee under federal law;

8 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a  
9 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

10 (j) principal and income in a medical care savings account established in accordance with 15-61-201  
11 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a  
12 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

13 (k) principal and income in a first-time home buyer savings account established in accordance with  
14 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time  
15 purchase of a single-family residence;

16 (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family  
17 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated  
18 beneficiary;

19 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the  
20 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

21 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of  
22 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution  
23 of the same estate or trust for the same tax period;

24 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch  
25 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction  
26 is not provided for federal income tax purposes;

27 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income  
28 pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the  
29 child and taxpayer meet the filing requirements in 15-30-142.

30 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or

1 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

2 (r) the amount of exempted capital gains from the sale of common or preferred stock from investment  
3 in qualified Montana corporations as provided in 15-30-110(2).

4 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall  
5 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as  
6 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election  
7 is effective.

8 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business  
9 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38  
10 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages  
11 and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and  
12 salaries were used to compute the credit. In the case of a partnership or small business corporation, the  
13 deduction must be made to determine the amount of income or loss of the partnership or small business  
14 corporation.

15 (5) Married taxpayers filing a joint federal return who are required to include part of their social security  
16 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal  
17 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement  
18 benefits when they file separate Montana income tax returns. The federal base must be split equally on the  
19 Montana return.

20 (6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end  
21 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income  
22 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is  
23 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the  
24 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the  
25 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the  
26 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted  
27 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage  
28 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting  
29 or expected to last at least 12 months.

30 (7) Married taxpayers who file a joint federal return and who make an election on the federal return to

1 defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA,  
2 pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana  
3 income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the  
4 same time period. The deferred amount must be attributed to the taxpayer making the conversion.

5 (8) An individual who contributes to one or more accounts established under the Montana family  
6 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the  
7 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000,  
8 for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions  
9 made by the spouses as being made by each spouse. The reduction in adjusted gross income under this  
10 subsection applies only with respect to contributions to an account of which the account owner, as defined in  
11 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or  
12 stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of  
13 contributions that reduced adjusted gross income.

14 (9) (a) A taxpayer may exclude up to \$5,000 from the taxpayer's adjusted gross income if the taxpayer:

15 (i) is a health care professional licensed in Montana as provided in Title 37;

16 (ii) is serving a significant portion of a designated geographic area, special population, or facility  
17 population in a federally designated health professional shortage area, a medically underserved area or  
18 population, or a federal nursing shortage county as determined by the secretary of health and human services  
19 or by the governor;

20 (iii) has had a student loan incurred as a result of health-related education; and

21 (iv) has received a loan payment made on the taxpayer's behalf by a loan repayment program described  
22 in subsection (9)(b) as an incentive to practice in Montana.

23 (b) For the purposes of subsection (9)(a), a loan repayment program includes a federal, state, or  
24 qualified private program. A qualified private loan repayment program includes a licensed health care facility,  
25 as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the  
26 facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec.  
27 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

28  
29 **Section 3.** Section 15-31-114, MCA, is amended to read:

30 **"15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the following

1 deductions are allowed from the gross income received by the corporation within the year from all sources:

2 (a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance  
3 and operation of its business and properties, including reasonable allowance for salaries for personal services  
4 actually rendered, subject to the limitation contained in this section, and rentals or other payments required to  
5 be made as a condition to the continued use or possession of property to which the corporation has not taken  
6 or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the  
7 recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income  
8 derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

9 (b) (i) all losses actually sustained and charged off within the year and not compensated by insurance  
10 or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the  
11 trade or business. The allowance is determined according to the provisions of section 167 of the Internal  
12 Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the  
13 elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any  
14 buildings, permanent improvements, or betterments made to increase the value of any property or estate, and  
15 a deduction may not be made for any amount of expense of restoring property or making good the exhaustion  
16 of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed  
17 on a title plant as defined in 33-25-105(15).

18 (ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined  
19 according to the provisions of 15-31-119.

20 (c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance  
21 for depletion and for depreciation of improvements. The reasonable allowance must be determined according  
22 to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the  
23 Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and  
24 intangible drilling expenses for corporation license tax purposes must be the same as the elections made for  
25 federal income tax purposes.

26 (d) the amount of interest paid within the year on its indebtedness incurred in the operation of the  
27 business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness  
28 created for the purchase, maintenance, or improvement of property or for the conduct of business unless the  
29 income from the property or business would be taxable under this part.

30 (e) (i) taxes paid within the year, except the following:

1 (A) taxes imposed by this part;

2 (B) taxes assessed against local benefits of a kind tending to increase the value of the property  
3 assessed;

4 (C) taxes on or according to or measured by net income or profits imposed by authority of the  
5 government of the United States;

6 (D) taxes imposed by any other state or country upon or measured by net income or profits.

7 (ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school  
8 district, or municipality of this state.

9 (f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

10 (g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that  
11 qualify for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, as amended.

12 (ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion  
13 of contributions made under this subsection.

14 (iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the  
15 annuity is a qualified charitable gift annuity as defined in 33-20-701.

16 (h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209,  
17 81-7-118, or 81-7-201;

18 (i) capital gains on common or preferred stock that was purchased in a qualified corporation, as defined  
19 in 15-30-110(2)(b).

20 (2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market  
21 value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological  
22 equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited  
23 postsecondary school located in Montana if:

24 (a) the contribution is made no later than 5 years after the manufacture of the donated property is  
25 substantially completed;

26 (b) the property is not transferred by the donee in exchange for money, other property, or services; and

27 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the  
28 property and representing that the use and disposition of the property will be in accordance with the provisions  
29 of subsection (2)(b).

30 (3) In the case of a regulated investment company or a fund of a regulated investment company, as



1 defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), as that  
2 section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section  
3 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or renumbered,  
4 except that the deduction for dividends is not allowed with respect to dividends attributable to any income that  
5 is not subject to tax under this chapter when earned by the regulated investment company. For the purposes  
6 of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal  
7 Revenue Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or renumbered, apply.  
8 A regulated investment company is not allowed a deduction for dividends received as defined in sections 243  
9 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as those sections may be  
10 amended or renumbered."

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